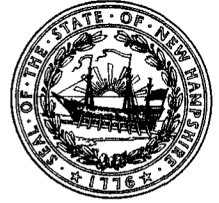




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 6, 2005

David Bruce
90 Fremont Road
PO Box 910
Raymond, NH 03077

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 04-058
(WATER DIVISION)**

Dear Mr. Bruce:

In Notice of Proposed Administrative Fine No. AF 04-058 issued December 1, 2004, the New Hampshire Department of Environmental Services Water Division ("DES") sought administrative fines totaling \$4,00 against David Bruce for alleged violations of RSA 482-B:5 for allegedly installing two pumps without a pump installers license on property located at Governor's Forest Community Water System in Fremont, NH ("the Property").

Pursuant to RSA 482:B16, II, and based on my review of the evidence presented at the hearing held on this matter on February 7 2005, I have concluded that a fine is not warranted.

This decision is based on the following findings and conclusions:

FINDINGS OF FACT

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302.
2. David Bruce is an individual doing business as Earthmovers, having a mailing address of 90 Fremont Road, P.O. Box 910, Raymond, NH 03077.
3. Governor's Forest Community Water System is a small community water system located in Fremont, NH, and is served by three bedrock wells numbered 2, 3, and 4.
4. David Bruce has not been issued a pump installer license by the New Hampshire Water Well Board.
5. On December 1, 2004, the Division issued a Notice of Proposed Administrative Fine No. AF 04-058 ("the Notice") to David Bruce, seeking fines totaling \$4,000 for two alleged violations of RSA 482-B:5.
6. Specifically, the Notice cited David Bruce for violating RSA 482-B:5, I for allegedly installing two pumps without a pump installer's license during the period from June 12, 2003

and September 10, 2003. Pursuant to Env-C 616.02(d), the Division sought a fine of \$2,000 for each violation.

7. The Notice included notice of hearing stating that a hearing on this matter was scheduled for Monday, February 7, 2005 at 1:00pm in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.
8. Pursuant to Env-C 601.06, Mr. Bruce responded to the notice in an appearance dated January 6, 2005, indicating that he would attend the hearing, which he did.

CONCLUSIONS OF LAW

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. RSA 482-B:5, I, requires a person to obtain a pump installer license from the NH Water Well Board prior to engaging in the business of pump installation.
4. Based on the evidence presented at hearing on February 7, 2005, the Division failed to prove by a preponderance of evidence that David Bruce committed the violations alleged in the Notice.
5. The Division presented no first-hand evidence that Mr. Bruce installed, or was legally responsible for installing, the pumps at issue. The Division relied solely on the testimony of DES employee Rick Schofield, who related hearsay reports from third parties that Mr. Bruce had installed the two pumps.
6. Mr. Bruce testified on his own behalf, along with Mr. Richard Fisher. Mr. Bruce testified that he did not install the pumps, but that he was the general and electrical contractor for the water system project. He further testified that he hired Mr. Richard Fisher, a certified public water system operator, to install the well pumps. Mr. Fisher's testimony confirmed that he had been paid to install the pumps, although it is not clear whether he was licensed to do so.

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7. The evidence supports a finding that Mr. Fisher was in fact directly responsible for installing the pumps, and not Mr. Bruce. Accordingly, no fine is justified against Mr. Bruce.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

COMMISSIONER OF ENVIRONMENT SERVICES

By:  **COPY**
Michael J. Walls, Presiding Officer

cc: Michael P. Nolin, Commissioner
Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, DES Legal Unit
Rick Schofield, DES WD
Public Information Officer, DES PIP

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99